

Meda-Care Ambulance, Inc. and 1199W, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO. Case 30-CA-6746

3 August 1983

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 11 January 1983 Administrative Law Judge Irwin H. Socoloff issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and a motion to expunge an exhibit from the record or, alternatively, to admit a superseding exhibit into evidence.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record¹ and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

¹ We grant Respondent's motion to admit into evidence the United States Court of Appeals for the Seventh Circuit's decision in *Grisbaum v. Meat Cutters Local No. 73*, 696 F.2d 520 (7th Cir. 1982). The Seventh Circuit's decision supersedes the United States District Court for the Eastern District of Wisconsin's decision in the same case, which is G.C. Exh. 29 in the instant case.

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We have further considered Respondent's contention that the Administrative Law Judge had evidenced a bias against Respondent's position. We have carefully considered the record and the attached Decision and reject these charges.

In sec. III.C, par. 6, of his Decision, the Administrative Law Judge found, based on the uncontradicted testimony of several employees, that Respondent's president, Darwin Larsen, had stated to employees that if union activities continued he would close the Company down. This statement was not alleged as or found to be an unfair labor practice in this case because it was alleged in another case, which was settled.

At sec. III.C, par. 24, of his Decision, the Administrative Law Judge inadvertently left out of the sixth sentence the word "not," which should be placed between the words "did" and "want."

And, finally, throughout his Decision, the Administrative Law Judge misspelled the name of Respondent's general manager, Charles Faist, as "Fiast."

³ Although the Administrative Law Judge ordered Respondent to expunge from its files any reference to Bonnie M. Lund's discharge, he neglected to include any mention of this in his proposed notice. We therefore order that the following paragraph be added to the Administrative Law Judge's notice: "WE WILL expunge from our files any reference to the 4 September 1981 discharge of Bonnie M. Lund, and WE WILL notify her in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against her."

lations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Meda-Care Ambulance, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL NOT promulgate, maintain in effect, or enforce unlawfully broad no-solicitation and no-distribution rules and WE WILL withdraw and abolish such rules previously promulgated.

WE WILL NOT discharge employees because they support a union or otherwise engage in protected concerted activities.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL offer Bonnie M. Lund immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges previously enjoyed.

WE WILL make Bonnie M. Lund whole for any loss of earnings she may have suffered because of the discrimination against her, plus interest.

WE WILL expunge from our files any reference to the 4 September 1981 discharge of Bonnie M. Lund, and WE WILL notify her in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against her.

All of our employees are free to become, remain, or refrain from becoming or remaining members of 1199W, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, or any other labor organization of their choosing.

MEDA-CARE AMBULANCE, INC.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge: Upon a charge filed on September 30, 1981, by 1199W, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, herein referred to as the Union, against Meda-Care Ambulance, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 30, issued a complaint dated November 20, 1981, and an amendment to complaint dated February 26, 1982, alleging violations by Respondent of Section 8(a)(4), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me in Milwaukee, Wisconsin, on March 15 through 18, 1982, at which the parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the General Counsel and Respondent filed briefs which have been duly considered.

Upon the entire record in this case, and from my observations of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Wisconsin corporation engaged, at its Milwaukee and West Allis, Wisconsin, locations, in interstate and intrastate transportation of passengers by ambulance vehicles. During the year ending December 31, 1980, it derived gross revenues in excess of \$500,000 from this operation and received, at the aforesaid locations, goods and materials valued in excess of \$50,000 which were sent, indirectly, from points located outside the State of Wisconsin. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

Respondent utilizes emergency medical technician (EMT) crews, based at its Milwaukee (Station 1) and West Allis (Station 2) locations, to transfer patients by ambulance. Primarily, the EMT's transport elderly people to and from nursing homes and hospitals. Typically, Respondent maintains for this purpose two-man crews at both stations on a 24-hour-per-day basis. In all, it employs some 20 to 22 such technicians.

The emergency medical technicians receive their ambulance run assignments from dispatchers, who often work out of their homes. When an EMT crew has completed a run, it will call the dispatcher who will either

send them on another run, direct them to return to their assigned station, or give other instructions.

On July 8, 1981, Respondent discharged its EMT's, James Lund and Gary Clevon. On the same date, it relieved Bonnie Lund, James Lund's wife, of her duties as a dispatcher. Theretofore, Bonnie Lund had worked as a part-time dispatcher and a full-time emergency medical technician. On July 14, the Union filed a charge in Case 30-CA-6609, alleging, *inter alia*, violations of Section 8(a)(3) and (1) of the Act with respect to Respondent's July 8 actions against the Lunds and Clevon. Complaint issued on August 18, and, thereafter, on February 16, 1982, the parties entered into a settlement agreement, disposing of the issues raised by that case.

Some 2 months after the occurrences of July 8, 1981, Respondent, on September 4, discharged Bonnie Lund. In the instant case, the General Counsel contends that Lund was fired in violation of Section 8(a)(4),¹ (3), and (1) of the Act. Respondent asserts that the discharge was for cause and was unrelated to Lund's union activities. The complaint, as amended at the hearing, also alleges that on September 11, 1981, by distribution to its employees, Respondent promulgated and thereafter maintained in effect unlawfully broad no-solicitation and no-distribution rules, in violation of Section 8(a)(1) of the Act. Respondent, at the hearing, admitted the promulgation and maintenance of those rules and their illegality.

B. The Rules

As established by the pleadings, Respondent, on September 11, 1981, distributed to its employees, and thereafter maintained in effect, the following rules:

THE FOLLOWING ACTS OF CONDUCT ARE PROHIBITED

* * * * *

25. Solicitation or distribution of any propaganda, written or verbal, with the intention of undermining the company, its employees, representatives or customers; or any manner of operation; or any other materials, actions or language which prove to be detrimental to the best interests of the company.

* * * * *

The preceding list of rules and regulations is not all-inclusive. Any acts of misconduct will be subject to appropriate disciplinary action which may include termination of employment.

Respondent, as noted, concedes that the foregoing rules are unlawful. Accordingly, I find and conclude that by promulgating and maintaining in effect unlawfully broad no-solicitation and no-distribution rules, Respondent violated Section 8(a)(1) of the Act.

¹ The record is devoid of evidence in support of the 8(a)(4) allegations.

C. *The Bonnie Lund Discharge*²

Bonnie Lund was hired by Respondent in September 1980 as a dispatcher. While continuing with her dispatching duties, she began, in November of that year, to work as an "on-call" emergency medical technician. On January 24, 1981, she became a full-time EMT. Thereafter, she worked as an EMT, a 24-hour shift, once every 3 days while also performing as a dispatcher for some 125 hours per month. As noted, on July 8, 1981, she was relieved of her dispatching duties. On September 4 she was discharged.

In late May, and early June, certain of Respondent's employees began discussing the possibilities of organization. During that period, Respondent's president, Darwin Larsen, contacted employee Sean Klaetsch. According to Klaetsch's uncontradicted testimony, Larsen asked him to go to the other employees, find out what the problems were and determine which employees would meet with Larsen, and explain the problems to him. Larsen also told the employee that there was a need for a committee. Sometime thereafter, Klaetsch reported to Larsen that the employees did not desire to have a committee.

On June 15, James and Bonnie Lund held an employee meeting³ at their home, and an official of the Union was invited to attend. Prior to the meeting, Bonnie Lund received a telephone call from Yvonne Larsen, Respondent's half owner and supervisor, who, according to Lund's uncontradicted testimony, stated that she had heard that there would be an employee meeting at the Lund house that day. Larsen asked if that were true and Lund stated that that was correct. Larsen asked for the names of the employees who would be attending the meeting and also inquired with respect to its purpose. Lund responded, saying that the employees were upset about their wages, hours, and working conditions. She named the employees who would attend the meeting, including Gary Clevon. Larsen stated that "We all know Gary is pro-union," and Lund informed her that, in fact, Clevon had invited a union official to the meeting. Lund asked Larsen to permit two on-duty EMT's to attend the meeting since they would be able to respond to ambulance run calls from the Lund home. Larsen agreed.

The next day, June 16, Respondent's general manager, Charles Fiast, a statutory supervisor, summoned Lund to appear in his office. According to the uncontradicted testimony of the employee, Fiast informed Lund that he had heard that she had held an employee meeting on the preceding day. Fiast stated that Yvonne Larsen was quite upset about it. He told Lund to watch her step and not to invite on-duty people again.

² The factfindings contained in this section are based on a composite of documentary and testimonial evidence introduced at the hearing. Where necessary to do so, specific credibility resolutions have been set forth, *supra*. In general, I have credited the testimony of Bonnie Lund who impressed me as honest and forthright in her narration of events. On the other hand, I have accorded little weight to the testimony of Russell Barczak, Respondent's director of public relations, in view of his demeanor as a witness, the evasive manner in which he testified and the material inconsistencies between his testimony and that of other credible witnesses.

³ Certain transcript pages incorrectly refer to the date of this meeting as July 15.

On June 28, a meeting of Respondent's employees was held at the offices of the Union. Employee Paul Baumbach testified that when he arrived at the meeting place he saw Jonathan Kostreva, Respondent's personnel manager and a statutory supervisor, sitting in a vehicle parked adjacent to the Union's offices. Baumbach approached Kostreva and said that it was too bad that Kostreva had to do that sort of thing. Kostreva stated that he had to "keep an eye on things." The following day, June 29, Bonnie Lund testified, Kostreva thanked Lund for not attending the meeting. She stated that she did not go because she and her husband were working. Kostreva said that he knew that the Lunds wanted to attend, and he thanked her for not taking an ambulance to the meeting. The foregoing testimony of Baumbach and Lund is uncontradicted.

Bonnie Lund signed a union authorization card late in June 1981. During the next 2 to 3 weeks, she solicited the authorization card signatures of other employees, on off-duty time, on the premises of station 1 and station 2. On at least one occasion, Lund was observed while engaged in this endeavor by Linda Weidemann, a conceded statutory supervisor. All told, this employee obtained some 10 to 15 signed cards. In this time period, Darwin Larsen met with the employees, at station 1 and, according to the uncontradicted testimony of the several employees who testified about this incident, stated that, if union activities continued, he would close the Company down. Larsen also informed the employees that he might take certain privileges away from them.

As noted, several days later, on July 8, James Lund and Gary Clevon were discharged. Also on that date, Kostreva and Fiast met with Bonnie Lund and took away her dispatching duties. They stated, Lund testified, that she could not continue to have dual responsibilities, that is, as an EMT and a dispatcher.

On July 22, 1981, at station 1, certain of Respondent's officials, and their attorney, Barton Peck, met with the employees. While the record contains various accounts of this meeting, it is relatively clear that Peck discussed his views concerning what a union can and cannot do and stated that it cannot guarantee better wages and working conditions. While assuring the employees that they had a right to have a union, he pointed to another company where, he stated, an employee committee meets with top management officials and works out problems. Peck asked the employees to discuss the matter among themselves, and the management officials left the room. The employees then decided to form a committee and, having so chosen, asked the management representatives to return. The latter were informed that Bonnie Lund and three or four other employees would constitute an employee committee, empowered to bargain with Respondent. Peck and the others were also advised that, if, over the course of several weeks, the committee proved of no advantage to the employees, they would bring in a union.

Some 2 weeks later, on August 5, according to Bonnie Lund's uncontradicted testimony, she presented to Fiast written requests that the Company recognize the employee committee as the representative of all Meda-Care

employees for purposes of collective bargaining. One document was signed by the committee members. A second document listed the names of the committee members and contained spaces for signatures by Respondent's officials. At Lund's request, the latter document was signed by Fiast, Kostreva, Yvonne Larsen, and Director of Public Relations Russell Barczak, the members of Respondent's bargaining team.

Later that day and, again, on August 18, the employee committee met with Respondent's bargaining group for purposes of negotiations. The principal topic of discussion at both meetings was a set of committee proposals which had been typed for distribution by Lund. There is conflicting record evidence as to whether Lund, or employee Robert Edwards, acted as the principal spokesman for the committee.

On August 19, 1981, having just received a copy of the complaint in Case 30-CA-6609, Peck, together with other company officials, met with the Lunds and Cleven. According to the credited testimony of Bonnie Lund, Peck told the employees that he wanted to reinstate them. He stated that the Company had acted badly, causing a great injustice to the employees. Peck told Bonnie Lund that other employees had, and still do, act in both the EMT role and the dispatcher role, and that there was no reason why she could not continue to perform both functions. Peck further stated that he would like the employees to withdraw the charges. The employees said that they wanted some time to consider the matter.

Two days later, Bonnie Lund hand delivered to Fiast a letter prepared by the Union's law firm, on its stationery, accepting reinstatement for her, but reserving the right to pursue other remedies, including backpay. Identical letters were sent on behalf of James Lund and Cleven. Thereafter, on September 2, James Lund was reinstated, and on September 3 Cleven was reinstated. At that time, Bonnie Lund was scheduled for work as a dispatcher, albeit, for fewer hours than she had worked prior to July 8.

On August 31, September 1 and 2, at stations 1 and 2, Bonnie Lund distributed copies of a letter from the committee to the employees, stating that the committee had not achieved progress in bargaining and, therefore, recommended affiliation with the Union. The committee asked for affirmative votes for that action on September 4, 7, 8, and 9.

According to Bonnie Lund's uncontradicted testimony, she met, on August 28, 1981, with Fiast and Kostreva, at which time an incident which had occurred on July 14 was, for the first time, brought to her attention. Kostreva handed a letter to Lund, dated August 6, from Mount Carmel Nursing Home to Russell Barczak, signed by Susan Davis, R.N. The letter complained of Lund's actions of July 14, while on an ambulance run to that nursing home, in particular, her argument with the nursing home staff concerning the proper oxygen therapy for administration to the patient who was to be transported. The letter concluded: "Mount Carmel would *prefer* that this employee not enter our facility on an ambulance run again." (Emphasis supplied.) Lund stated her version of the matter and Fiast responded, stating that he did not care if Lund was right or not. He told the employee to

apologize to Nurse Davis and to see to it that Respondent received written acknowledgment of the apology within 1 week.

Later that day, Fiast and Kostreva wrote, and delivered to Lund, a warning letter stating that if the Mount Carmel Nursing Home matter was not rectified by Lund, further action would be taken. On September 2, Lund received another letter from Fiast and Kostreva, informing her that "... unless you have convinced Mount Carmel Nursing Home to allow you to continue serving it, we will have no recourse but to terminate your employment as of the end of normal business hours on September 4, 1981."

On September 2, Lund testified, she told Fiast that she had gone to Mount Carmel, apologized to Nurse Davis, and requested that a letter be sent to Respondent. On September 4, Kostreva, Fiast, and Barczak met with Lund and told her that they had received a letter from Mount Carmel refusing to accept Lund's apology. Lund asked to see the letter but Fiast refused to show it to her. Fiast then discharged her. Lund asked if she was also terminated from her dispatching duties. The three supervisors looked at each other, then told Lund that she "was terminated from everything." No reason, other than the Mount Carmel matter, was assigned for the discharge.

On September 11, Bonnie Lund received a termination letter from Respondent, dated September 8, stating that her conduct of July 14 "has jeopardized our contract with Mount Carmel Nursing Home" and that "we have been advised by Mount Carmel as of last Friday that despite your apology, it would discontinue our relationship in the event of any new infraction occurring in the transports of its patients if you were on duty."⁴ The termination letter also cited two new and additional reasons for the discharge, namely, "information received by us from one of our dispatchers indicating an unreasonable delay on your part in servicing Mount Carmel on August 7, 1981," and a claimed inability promptly to service accounts on September 2, 1981 "for the alleged reason: that your ambulance was short on oil," a claim neither supported by documentation nor justifying "the inordinate amount of time covered by the delay."

As noted, neither the matter of August 7, nor that of September 2, had previously been raised with Lund. With respect to August 7, Lund credibly testified that there was not an unreasonable delay in responding to the Mount Carmel call of that date by Lund and her partner, Steve Johnson. Rather, she testified, their travel time was within normal range for an emergency call, to that facility from station 1, about 15 minutes.⁵ While the

⁴ Attached to the termination letter was, *inter alia*, a letter from Mount Carmel Nursing Home, to Russell Barczak, dated September 4, 1981, stating that "in the event there is any further infractions in the transport of our patients, we would be forced to use another ambulance service if the above mentioned transporter is on duty."

⁵ I have accepted Lund's testimony concerning her estimated response time, rather than the estimates of the dispatcher, Mary Jane Barczak, Russell Barczak's wife, who, I found, a confused, unreliable, and biased witness.

record contains various testimonial estimates concerning normal response time, Respondent did not introduce its call card records in order to show the usual response times by Lund and other EMTs. Moreover, it is undisputed that the customer, Mount Carmel, did not complain about the response time. It is also significant that Lund's partner, Johnson, was neither reprimanded nor disciplined concerning the matter.

As to September 2,⁶ Lund and her partner of that day, Wayne Sager, were based at station 2. Having completed an assignment, they asked permission of the dispatcher, Mary Jane Barczak, to proceed to station 1 in order to prepare their lunches. This was in accord with normal practice as there is a refrigerator and a microwave oven at station 1, but no such facilities at station 2. Nonetheless, permission was denied. Thereafter, Lund and Sager proceeded to another assignment. As a result of the condition of the patient next transported, the sheets on the ambulance cot became filled with germs and green bile and could not be used for another patient. Also, Lund and Sager noticed that the vehicle's oil pressure gauge was flickering on and off. In addition, they had not yet performed the daily routine maintenance check under the hood of their vehicle. As such maintenance checks are performed at station 1, and as the required oil and linens are kept at station 1, and not at station 2, and as they would pass station 1 on the way to station 2, Lund and Sager decided to proceed to station 1 in order to change the linen, disinfect the cot, add oil, and perform a maintenance check. Lund called the dispatcher and notified her that they would stop at station 1 to take care of vehicle maintenance problems. While there, Lund responded to a call from Mary Jane Barczak and explained that the vehicle was low on oil and needed a maintenance check and a change of linen. Lund estimated that the required procedures would take 10 minutes and, then, she and Sager would proceed to station 2. Thereafter, Sager changed the linen, disinfected the cot, and prepared the lunches while Lund performed the maintenance procedures. Noting that oil was only one half quart low, Lund did not add oil but, rather, took two quarts of oil with her for later use. Lund estimated her time at station 1 at 10 minutes. According to Barczak, the employees were there for 20 minutes. It is undisputed that Lund and Sager neglected to document their under-the-hood checks, as required by company procedures. It is also undisputed that at no time while at station 1 were Lund and Sager unavailable for assignment. Respondent did not discipline Sager for his actions of September 2.

There is ample record evidence demonstrating that, in proceeding to station 1 on September 2, for the purposes for which they went there, Lund and Sager acted in accordance with Respondent's established policies. Moreover, on September 9, according to Sager's uncontradicted testimony, he asked Fiast whether, on September 2, he, Sager, and Lund had contravened any rules or policies of Respondent. Fiast replied, stating that the Company understood that certain functions could only be performed at station 1 and that, on September 2, Sager and

Lund had not broken any rules by stopping at station 1 to perform vehicle maintenance and prepare meals.

The record evidence does not show either a breach of duty by Lund on August 7, or on September 2, or a reasonable belief by Respondent that there had been a breach of duty. Lund's partners of those dates were not reprimanded or disciplined. Indeed, these matters were not raised with Lund prior to the discharge letter. In these circumstances, the conclusion is warranted that the matters of August 7 and September 2, utilized by Respondent to support the discharge, were raised as a pretext.

Turning to the matter of July 14, the primary reason assigned by Respondent to support the discharge, there is credible record evidence that Respondent's officials themselves orchestrated the complaints of Mount Carmel, and that institution's threat to cease doing business with the Company. This is revealed from an examination of the testimony of Mount Carmel's employee, Susan Davis, RN, and that of Russell Barczak, concerning their conversations and dealings with respect to this matter.⁷

Davis contacted Respondent concerning the incident of July 14 on or about July 15. Barczak did not return the call until July 27. Advised of the matter, Barczak asked Davis to send a letter of complaint. On August 4, he called Davis and said that the requested letter had not yet been received. Davis agreed to send a letter. On August 13 or 14, Barczak called Davis again, asking if he could come to Mount Carmel and personally pick up the letter. Davis agreed, and, on that day, Barczak obtained the letter dated August 6. As noted, Respondent did not speak to Lund about the matter until August 28.

Shortly before August 31, Barczak called Davis and told her that Lund would be coming to Mount Carmel, to apologize, and that Lund's job depended upon whether or not Davis accepted the apology. After Davis met with Lund, on August 31, she, Davis, called Barczak and told him that her decision was to accept the apology. She added that anyone can make a mistake, but that there could not be further infractions. Barczak objected, telling Davis that Lund had already committed another infraction at Mount Carmel, when she was late responding to a call. Davis asked if Barczak had proof of that assertion and he said that he did, adding that other facilities had also complained about Lund. At that point, Davis changed her position and said that she did want Lund back at Mount Carmel. Barczak said he could not guarantee it unless Davis wrote a letter to that effect and, in addition, specifically threatened to discontinue use of Respondent's ambulance service if Lund were sent to Mount Carmel. Davis agreed to do so. This conversation was the origin of Mount Carmel's second letter, dated September 4, which was also picked up, in person, by Russell Barczak.

Although Respondent first learned of the Mount Carmel complaint on July 15, it did not, as noted, bring

⁶ My findings concerning this incident are based on the testimony of EMTs Lund and Sager. To the extent that Mary Jane Barczak's testimony conflicts with that of the employees, it is not credited. See fn. 5.

⁷ Conflicts in the testimony of Davis and Barczak have been resolved in favor of Davis' version of events. Davis, a disinterested witness, testified in a clear, forthright, and believable manner. I have previously discredited Barczak.

the matter to Bonnie Lund's attention until August 28, at the very time when the employees, with Lund in a leadership role, were acting to abandon the employee committee and bring in the Union. The complaint letters from Mount Carmel were solicited by Respondent. Mount Carmel's threat, to cease doing business with the Company, was solicited by Respondent. Having told Lund that her job depended on Davis' acceptance of Lund's apology, Respondent, through Barczak, proceeded to convince Davis not to accept the apology, after Davis had made a contrary decision. In order to induce Davis to change her mind, and not accept the apology, Barczak made false claims to Davis concerning Lund.⁸ In light of these facts, I think it patently clear that Respondent orchestrated a series of actions, by itself and Mount Carmel, to create a pretext to support the discharge of Lund.

In view of Lund's extensive union activities, as detailed, *infra*; Respondent's knowledge of same; the Company's manifest antiunion animus, as shown, *inter alia*, by its threats to close the business if the employees brought in a union; the timing of the discharge and the pretextual reasons advanced to support it, I find and conclude that Lund was discharged in reprisal for her union activities. Respondent thus violated Section 8(a)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent, Meda-Care Ambulance, Inc., is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. 1199W, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By promulgating and maintaining in effect unlawfully broad no-solicitation and no-distribution rules, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

4. By discharging Bonnie M. Lund, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(3) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁹

The Respondent, Meda-Care Ambulance, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall:

(a) Promulgating, maintaining in effect, or enforcing unlawfully broad no-solicitation and no-distribution rules.

(b) Discharging employees because they support a union or otherwise engage in protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Withdraw and abolish its unlawfully broad no-solicitation and no-distribution rules and notify its employees, in writing, of said withdrawal and abolition.

(b) Offer to Bonnie M. Lund immediate and full reinstatement to her former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to her seniority and other rights and privileges.

(c) Make Bonnie M. Lund whole for any loss of pay she may have suffered by reason of Respondent's discrimination against her by payment to her of a sum of money equal to that which she normally would have earned as wages, from the date of the discrimination to the date of Respondent's offer of reinstatement, less net earnings during such period, with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

(d) Expunge from its files any reference to the discharge of Bonnie M. Lund on September 4, 1981, and notify her in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against her.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

⁸ Despite Davis' testimony that Barczak told her that there had been complaints about Lund by other customers, Barczak, in his testimony, admitted that he was not aware of any such complaints.

⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(f) Post at its Milwaukee, Wisconsin, area, facilities copies of the attached notice marked "Appendix."¹⁰ Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by Respondent representative, shall be posted by it immediate-

¹⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ly upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.